

# **FINAL**

# **HUD FY2011 Contingency Plan** for Possible Lapse in Appropriations

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#### 1. General Guidance and Legal Decisions

The Constitution, statutory provisions, court opinions, and Department of Justice (DOJ) opinions provide the legal framework for how funding gaps and shutdowns have occurred in recent decades. Additionally, the Office of Management and Budget (OMB) provides agency guidance in OMB Circular A-11, Section 124.

The Constitution provides, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." The Antideficiency Act prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. 31 U.S.C. sections 1341 *et seq*.

The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Antideficiency Act unambiguously prohibit agency officials from incurring obligations in the absence of appropriations ("Applicability of the Antideficiency Act Upon a Lapse in an Agency's Appropriations" (1980) and "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations" (1981)). The Office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995, that reaffirms and updates the 1981 opinion.<sup>1</sup>

When the Congress fails to act on program supplementals and the result is partial funding interruptions, special procedures beyond those outlined in this section may be warranted. In such cases, agencies must consult OMB. In the absence of appropriations:

- Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.
- Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.<sup>2</sup>

In 1995, the Department of Justice Office of Legal Counsel provided a legal opinion that identifies the types of activities that can take place during a shutdown. This includes (1) activities to address cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response; (2) government functions funded with multi-year appropriations or indefinite appropriations; (3) express authorizations for agencies to enter into contracts or to borrow funds to accomplish their missions (without appropriations); (4) obligations necessary to discharge of the President's constitutional duties and powers; and (5) the orderly termination of functions that may not continue during a period of lapsed appropriations.<sup>3</sup>

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<sup>&</sup>lt;sup>1</sup> OMB Circular A-11, Section 124; http://www.whitehouse.gov/sites/default/files/omb/assets/a11 current year/s124.pdf

<sup>&</sup>lt;sup>2</sup> OMB Circular

<sup>&</sup>lt;sup>3</sup> See Department of Justice Office of Legal Counsel Memorandum Re: "Government Operations in the Event of a Lapse in Appropriations" from Assistant Attorney General Walter Dellinger to Alice Rivlin, Director, Office of Management and Budget, dated August 16, 1995.

#### 2. Guidance for Program Operations

#### a) Definition of Excepted

In the event of a government shutdown due to a lapse in appropriations, most Federal employees are required to stop work because no funds would be available to pay staff and the government is prohibited from accepting voluntary services. A limited number of employees are "excepted" from this general rule based on the functional activity they perform.<sup>4</sup> This list should include:

- 1. Employees who are necessary to address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.
- 2. Employees who perform functions that are funded through fees or under multi-year (as opposed to annual) appropriations.
- 3. Employees who perform functions that are related to express authorizations to contract or borrow without an appropriation.
- 4. Employees necessary to meet the obligations necessary to the discharge of the President's constitutional duties and powers. This is understood to be employees necessary to interpret statutes, such as the Antideficiency Act, to avoid significant constitutional issues.
- 5. Employees who are required for the orderly termination of agency functions.

In addition, Presidential appointees are not subject to the furlough. However, Schedule C, non-career SES, and career SES have no special status in the case of a shutdown. They must be deemed "excepted" or "not excepted" based upon the duties they perform.

#### b) Compliance with OMB Circular A-11

HUD will avoid initiating new activities unless the activities fall under one of the exceptions. As set forth specifically within this document, the Secretary has determined the activities that are essential to operate HUD during an appropriations hiatus. HUD estimates that a half-day (four hours) would be needed to complete the shutdown.

National Finance Center records indicate that HUD has 9,700 employees on board as of pay period ending 03/12/2011. The following chart demonstrates the number of employees, by

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<sup>&</sup>lt;sup>4</sup> See Department of Justice Office of Legal Counsel Memorandum Re: "Government Operations in the Event of a Lapse in Appropriations" from Assistant Attorney General Walter Dellinger to Alice Rivlin, Director, Office of Management and Budget, dated August 16, 1995.

funding stream, and those who will be expected to report to full-time duty during a hiatus in appropriations:

Funding Streams	Number of Employees as of	Approximate Number of
	3/12/11 (National Finance	Excepted Full-time Employees
	Center Records)	
Annual Appropriations	8597	502
WCF	320	294
ARRA	61	50
Total	9700	846

The reasons for the retention of excepted employees are set forth in this document by program office. Additionally, during an appropriations hiatus, HUD anticipates that a modest number of employees would be called in on an intermittent basis to work solely on excepted activities.<sup>5</sup>

# a) Excepted Activities by Office

#### i. Office of Public and Indian Housing (PIH)

- PIH will address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.
- PIH has multi-year funding through the American Recovery and Reinvestment Act, (ARRA). ARRA-funded employees will report to duty during an appropriations hiatus.

#### PIH will:

- Keep open the line of credit control system for the purposes of disbursing funds for public
  housing (operating subsidies and capital funds) that were appropriated in prior years or
  necessary to support an exempted activity. Funds that have already been obligated in the
  system and which can be drawn down without further action or review by HUD employees
  may also be accessed
- Keep open the line of credit control system for section 8 tenant-based rental assistance, noting that funds are only available for payments through March and April.
- Continue ARRA-funded activities.

Public housing agencies and other grantees continue operating in the event of a government shutdown and there are existing IT systems that will be available to public housing agencies so that they can draw down obligated funding from prior years or funds previously obligated during the continuing resolution which can be drawn down without further action or review by HUD employees. PIH also depends upon contract assistance to maintain such systems. The systems and contractors below are

<sup>&</sup>lt;sup>5</sup> The Department anticipates that up to an additional 400 employees per day may be needed, on an intermittent basis, to perform excepted activities. The Department expects these needs to be at their highest during the first few days of any appropriations lapse.

also considered to be excepted as activities are necessary to protect government property and records:

- Enterprise Income Verification, OST Inc
- Inventory Management System, QSSI
- Voucher Management System, Action Net, Inc.
- Financial Assessment Sub-System, Multi-family C3 Systems
- Financial Assessment Sub-System, PIH
- Physical Assessment Sub-System, QSSI
- Integrated Assessment Sub-System, CITI
- Management Assessment Sub-System, New Tek
- Technical Assistance Center, IDL Solutions
- Customer Assessment Sub-System, IDL Solutions

#### ii. Office of Community Planning and Development (CPD)

#### CPD will:

- Continue to provide for the delivery of essential housing and emergency services for homeless persons and persons with AIDS to protect against imminent threats to the safety of human life.
- Continue to disburse CDBG, HOME funds and other block grant funds in cases where failure to address issues result in a threat to safety of life and protection of property.
- Continue to disburse funding for the Neighborhood Stabilization Program (NSP) 1 awards (grantees must expend funds within four years of receipt) and NSP 2 awards (grantees must expend 100% of funds within three years); and NSP 3 awards (grantees must expend 100% of the initial allocation of funds within three years of receipt), funded through multi-year and ARRA appropriations.
- Continue ARRA-funded activities.
- Continue Disaster Recovery Assistance Programs funded through multi-year appropriations.
- Continue to maintain the CACI contract for the systems (e.g., IDIS, DRGR, eSNAPs) that support excepted activities.

CPD grantees submit consolidated plans that are deemed approved if not disapproved within 45 days of submission. These are rolling submissions that are due 45 days prior to submission of the start of their program years. CPD grantees select the start dates of their program years. A long term shut down could result in the automatic approval of consolidated plans. The review of the consolidated plans does not fall under an excepted activity.

#### iii. Office of Sustainable Housing and Communities (OSHC)

The Director and the Grant and Contract Manager will be available on an intermittent basis to provide access to obligations for FY2010 funding.

#### iv. Office of Housing (Housing)

Work during an appropriations hiatus includes the performance of functions that are funded through multi-year appropriations or where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property. These activities are associated with FHA's portfolio of insured mortgages – multifamily, healthcare, and single family, as well as commitments entered into for project-based rental assistance. All excepted staff will be performing functions associated with multi-year as well as no-year credit reform financing ("x-year") appropriations and are necessary to administer transactions for which a commitment has been made; administering the portfolio of FHA insured loans (collecting premiums, paying claims); or fulfilling obligations associated with Housing's project-based rental assistance programs. In addition, "excepted" employees will be performing functions related to the protection of government property.

#### **FHA MF Development**

- Closings on Projects with Firm Commitments that have a scheduled closing during the shut down period.
- Closings on final Endorsements that have critical external deadlines.
- During the first 10 business days of a shut down the following will apply:
  - ➤ MAP Lenders servicing construction loans may, at their and Owners' and General Contractors' risk process interim construction draws. HUD will perform or contract for construction inspections on a post-review basis at such time the government re-opens. Initial and Final draws will not be processed or approved.
  - > No change orders will be processed or approved

#### Section 202/811 Development

- Closings on Projects with Firm Commitments with scheduled closing dates during the shut down period.
- Final Closings on Projects with critical deadlines.
- No construction draws or construction inspections will be done in the first 10 days of any shutdown and will be re-evaluated as needed for use of intermittent staff.

#### **Asset Management/FHA and Assisted Housing**

- Make payments under Original Term Section 8 contracts, rent supplement, section 236, PRACS where there is a permanent or indefinite authority or multi-year funding.
- Renew/Fund Section 8 contracts and PRACS where there is budget authority available from prior appropriations or recaptures.
- Payment of PBCAs for work on properties with prior appropriations.

- Management of HUD-owned property and property where HUD is Mortgagee-inpossession.
- Approval of Emergency repairs.

#### **Housing**

- The Office of Single Family Housing will not endorse new loans. Only operations necessary to maintain FHA's existing portfolio, including maintenance issues relating to the health and safety of REO inventory will be conducted. The HUD Resource Center (FHA Call Center) will be operational.
- The Office of Healthcare Programs will have minimal staff on board to conduct closings of projects with firm commitments for insurance.

#### v. Ginnie Mae

Ginnie Mae's role in the secondary mortgage market is vital to the stability and liquidity of the primary mortgage market. An interruption in the operations would create immediate and significant market disruption that would lead to financial losses for investors and increased mortgage rates for government-insured mortgage loans. It has been the view of the U.S. Department of Housing and Urban Development (HUD), the Department of Justice (DOJ), and the Office of Management and Budget (OMB) that Ginnie Mae may incur obligations and continue its operations during an appropriations lapse under the emergency exception, 31 U.S.C. § 1342. Furthermore, all Ginnie Mae contracts are funded with "no year" money; work performed by contractors in support of operations may continue.

Nonetheless, in the event of a government shutdown due to a lapse in appropriations and notwithstanding the determination that Ginnie Mae may continue operations, Ginnie Mae will limit its operations to the following functions that are essential to avoid disruption to Ginnie Mae's ability to fulfill its obligations:

	Lapse of Appropriations
<b>Ability to Issue</b>	Yes
Commitments	
	Emergency Exception (property protection) – OMB concludes that Ginnie
	Mae's operation is essential for market stability and maintaining low
	mortgage rates for Government-insured mortgages (11/2002 DOJ Opinion to
	OMB citing 10/2002 OMB letter)
Ability to Issue	Yes
Mortgage-Backed	
Securities and	Emergency Exception (property protection) – OMB concludes that Ginnie
Structured Multi-	Mae's operation is essential for market stability and maintaining low
Class	mortgage rates for Government-insured mortgages (11/2002 DOJ Opinion to
Transactions	OMB citing 10/2002 OMB letter)

Ability to	Yes
Receive/Process	Emergency Exception (property protection) – OMB concludes that Ginnie
Monthly MBS	Mae's operation is essential for market stability and maintaining low
_	1
Loan & Payment	mortgage rates for Government-insured mortgages (11/2002 DOJ Opinion to
Accounting Data	OMB citing 10/2002 OMB letter)
Ability to Pay	Yes
Securities	
	Emergency Exception – Failure to pay investors would cause a default on the
	guarantee of the Government and mortgage market stability would be put at
	risk (11/2002 DOJ Opinion to OMB)
Ability to Pay	Yes, for essential employees
Employees	1 cs, for essential employees
Employees	
	Emergency Exception – Maintaining work of its employees is necessary to
	respond to the emergency (11/2002 DOJ Opinion to OMB)
Ability to Engage	Yes, if those contractors are necessary to carry out Ginnie Mae's functions
and Pay	
Contractors	May not fall directly under emergency exception but if an agency may
	continue to operate during an appropriation lapse, it may incur obligations
	beyond employee salaries that are necessary for carrying out the functions
	(11/2002 DOJ Opinion to OMB). Ginnie Mae manages contractual
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A 1 *10 4 4 75 7	obligations under mandatory, no-year funding.
Ability to Travel	Yes
for Emergency	
Purposes (e.g.,	Emergency Exception – Ability to default is essential for market stability and
<b>Issuer Defaults</b> )	protecting Government's property

In addition, it is necessary that the following contractors, responsible for supporting Ginnie Mae's operations and excepted functions, perform excepted activities:

- Bank of New York
- Bank of America Master Subservicer
- Loan Care Master Subservicer
- Ofori Master Subservicer
- Midland Mortgage Master Subservicer
- Ernst & Young (only Multiclass deals) Transaction Advisor
- Hunton & Williams (only Multiclass deals)
- Federal Reserve Bank of New York
- Deloitte & Touche MBS Administration (only disclosure functions and guarantee fee functions)
- Deloitte Field Reviews (in support of Issuer Defaults)

#### vi. Office of Policy Development and Research (PD&R)

PD&R will continue to process invoices for grants and cooperative agreements in order to ensure an orderly shutdown of agency functions.

#### vii. Fair Housing and Equal Opportunity (FHEO)

With respect to systems, the CIO/CFO LOCCS system is necessary for maintaining excepted functions in FHEO. System unavailability would result in the inability of our grantees to receive payment and continue operations in the investigation of their complaints. FHEO's TEAPOTS contract with GSA is funded. A limited number of FHEO Information Technology personnel are necessary, on an intermittent basis, to monitor/approve this contract work including system maintenance and daily operation as well as immediately fix any system delays/crashes.

#### viii. Office of Healthy Homes and Lead Hazard Control (OHHLHC)

#### OHHLHC will:

- Continue to provide oversight and approval of payment requests to reimburse Lead Hazard Control and Healthy Homes grantees for activities that protect the health and welfare of residents and children.
- Continue to manage ARRA-funded programs.

#### ix. Office of General Counsel (OGC)

If a lapse in appropriations appears to be reasonably foreseeable, OGC will:

- Provide program clients with lists of activities that continued during the previous lapses and provide legal guidance about whether new programs are excepted activities.
- Provide legal advice about the ramifications of a shutdown with respect to all program, contractual, operational and personnel functions. Review legal documents, including contracts, grant agreements, notices to grantees, proposed stop work orders, notices to employees, etc. Provide legal assistance to senior staff about related labor issues.
- Draft motions for a stay of proceedings pending appropriations to be filed in all administrative cases pending before the HUD Office of Hearings and Appeals.
- Coordinate with the Department of Justice to ascertain the impact of a lapse on appropriations on pending litigation in the federal courts.
- Review all OGC contracts and determine which, if any, require stop work orders in the events of a lapse in appropriations. If necessary, prepare the stop work orders.
- Identify the pipeline of scheduled closings for insured loans where the firm commitment was issued before the lapse in appropriations. Identify the staff necessary to close the loans and coordinate the closings with the Office of Housing, Field Policy and Management and the Office of Departmental Operations.

If a lapse in appropriations occurs, the Office of General Counsel will:

- Provide legal advice to senior Departmental officials necessary to meet the obligations necessary to the discharge of the President's constitutional duties and powers.
- Provide legal advice to facilitate the orderly shutdown of activities with respect to HUD staff, including disseminating notices of furlough, instructions about out-of-office messages, handling of time and attendance systems, etc.
- Provide legal advice and review legal documents to assist in the orderly termination of agency functions. This includes review of contractual agreements and points of obligation.
- Provide legal advice to address emergency situations where the failure to perform those
  functions would result in an imminent threat to the safety of human life or the protection
  of property.
- File motions for a stay of proceedings pending appropriations to be filed in all administrative cases pending before the HUD Office of Hearings and Appeals.
- Bring in field HUD attorneys, on an intermittent basis, to close loans for multifamily
  housing, insured healthcare facilities, and others where the firm commitment was issued
  prior to the lapse of appropriations.
- Monitor non-federal litigation to insure the protection of property. Headquarters and field attorneys will be brought in on an intermittent basis to handle affirmation and defensive litigation issues related to the imminent threat to the safety of human life or the protection of property.
- Provide legal advice to Ginnie Mae.
- Provide legal advice to HUD programs that perform functions that are funded under multi-year appropriations, ARRA funding, permanent and indefinite appropriations, and other non-annual appropriations. This includes legal advice related to contracts funded through the Working Capital Fund.
- Provide legal advice to HUD programs that perform functions that are related to express authorizations to contract or borrow without an appropriation.
- Establish a legal hotline for the excepted HUD staff.

# x. Office of Field Policy and Management (FPM)

FPM will maintain minimal staff to ensure the safety of human life and the protection of property in the ten HUD Regional Offices. Additionally, FPM will facilitate the intermittent opening of field offices to accommodate: (1) the closing of loans for multifamily housing, insured healthcare facilities, and others where the firm commitment was issued prior to the lapse of

appropriations; (3) employees funded by ARRA; and (4) any other excepted activities identified by the Secretary or Assistant Secretaries that must take place in field locations.

#### xi. Chief Financial Officer (CFO)

In order to oversee an orderly termination of agency functions, the CFO will:

- Provide overall guidance to functioning areas and Program Offices, as well as reporting to senior management and stakeholders.
- Maintain minimum staff to maintain liaison with the Office of Management and Budget, and to provide overall execution guidance to Program Offices
- Process potential allotment actions to prevent violations of the Antideficiency Act.
- Provide guidance on appropriation law issues, including Antideficiency Act issues.
- Make appropriate payments where funds are available that are processed through OCFO for valid obligations.
- Provide system configuration support and contractor oversight for systems needed to manage excepted activities.

# xii. Departmental Management (DM), including the Office of Public Affairs (OPA)

DM will maintain a limited staff to provide oversight and direction for all excepted activities. This staff will provide essential support to the Secretary for an orderly termination of agency functions. A number of Departmental Management staff are excepted by Presidential appointment.

OPA will assist HUD leadership with internal and external communications that affect Agency's ability to protect the safety of human life, the protection of property, and the orderly termination of agency functions.

During this period the OPA will work with FPM regional staff as necessary to coordinate with internal and external communication.

#### xiii. Office of the Chief Human Capital Officer Contingency Plan (OCHCO)

OCHCO will undertake the following activities which are required for orderly termination of agency functions:

- Take necessary personnel actions to release employees in accordance with applicable law and regulations of the Office of Personnel Management.
- Prepare and distribute employee notices of furlough.

- Process personnel and pay records in connection with shutdown furlough actions.
  - o Coordinate OCHCO communication and manage employee hotline.
  - o Coordinate and disseminate information and policy for shutdown.
  - o Provide employee assistance for the Department.
  - o Coordinate and provide time-keeping responsibilities, employee pay, benefits, and retirement administration.

The following activities are necessary to protect the safety of excepted employees and federal property:

- Manage HQ building facility.
- Maintaining the field facilities, including serving as liaison with GSA/private building
  owners on matters relating to building services, security and emergency preparation;
  maintaining and monitoring telecommunications and security systems, as needed; and
  providing logistical support for any other staff designated to work during the shutdown or
  furlough.
- Maintaining building security. During a shutdown period, the Children's House childcare center will remain open. Both the Fitness Center and Credit Union will be closed, as would the cafeteria, Urban Café, and Dunkin' Donuts.
- Maintain contracts to keep the building open and manage security of the HQ building facility.

The contractors responsible for maintaining OCHCO excepted work (e.g., building security, building facility, personnel/payroll systems etc.) will continue to work. The Government Technical Representatives (GTR) will contact the vendors to apprise them of the number of contracting staff required to provide required services.

#### xiv. Office of the Chief Information Officer (OCIO)

OCIO will maintain services necessary to support excepted activities. The Working Capital Fund is funded by both a direct appropriation and funds transferred from other accounts. The FY 2010 direct appropriation for the WCF included funds that will be available until September 30, 2011. In addition, funds transferred into the WCF are available to be expended and are no-year money. Activities and positions funded by no-year or multi-year funds are authorized to continue in the event of a shutdown, as the expiration of the CR does not affect availability of those multi-year and no-year funds appropriated under prior appropriations acts. WCF employees are not subject to furlough due to a lapse in appropriations. If it appears that the government shutdown will be extensive, WCF employees may be furloughed due to a lack of work. 5 U.S.C. 7511(a)(5). In this instance, the regulations governing reduction in force would apply. 5 C.F.R. Part 351.

#### xv. Office of the Chief Procurement Officer (OCPO)

In the case of a short term shutdown, the CPO, Deputy CPO and a Director from Field Operations with a minimal number of Contracting Officers will coordinate contracting activities full-time. Intermittent employees may be identified to assist as circumstances dictate.

<u>Excepted Contracts</u>: The following contracts and related actions may continue during a lapse of appropriations:

- a) <u>Funded by other than annual appropriated funds:</u> contract actions funded by multi-year, noyear, or revolving funds, or advanced appropriation whose accounts have sufficient carry over balance.
- b) Expressly Authorized to Continue Even Without Funding.
- c) Necessary for Safety of Human Life or Protection of Property: Any activity or function that is continued based on a determination that it qualifies for the protection of life or property exception must be limited only to the extent that the Chief Procurement Officer (CPO) determines that imminent danger to life or property would result from their termination or diminution. As for any administrative, research or other support function related to an excepted activity, that function should also continue, but only to the extent that they are excepted to maintain the effectiveness of those activities or functions that are engaged in the protection of life or property.
- d) <u>Already funded:</u> The status of these actions will be re-evaluated when the funding is exhausted.

#### Actions Necessary Prior to a Shutdown:

- a) OCPO, in conjunction with Program Offices will identify excepted activities and associated contracts. From this listing, managers must further identify contracts that, in whole or in part, support activities that are excepted from shutdown. This will serve two major purposes for HUD contracting activities:
  - To identify contracts for which Stop Work Orders or Partial Terminations for the Convenience of the Government must be issued, and to allow Contracting Officers sufficient lead time to prepare modifications to descope contracts and prepare any necessary justifications and other supporting documentation for contracts that will be partially terminated; and
  - ii. To allow OCPO to determine an effective distribution of warranted Contracting Officers to support an orderly shutdown and the management of contracts supporting excepted activities. Determining an effective level of management for contracts supporting excepted activities would include consideration of Government Technical Representative and program management support.
- b) If a service contract is determined to be necessary to support an excepted activity, or if a contract is already funded, but the facility in which contract employees work is closed down during the shutdown, a Contracting Officer may authorize contractors to allow their employees to telecommute provided that the contracts do not specifically prohibit contractors from permitting their employees to telecommute.

#### xvi. Office of Disaster Management and National Security (ODMNS)

The office coordinates national security and disaster response and recovery operations for the department. In the event of a government shutdown due to a lapse in appropriations, ODMNS will identify employees who are necessary to address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property. Excepted functions will include:

- A core team to monitor national security and disaster situational awareness that is able to surge
  the rest of the department's continuity of operations and disaster teams should they be required.
  Supports 2007 National Communications System Directive 3-10 and Homeland Security
  Presidential Directive-5: Management of Domestic Incidents (2003).
- Departmental Continuity of Operations Teams and Disaster Response and Recovery Teams are not excepted, but will be recalled should a disaster strike or a security incident occur.
- The office will also continue to provide physical protection to the Secretary as required under 42 U.S.C 3533, support the HUD Guard Force in maintaining safety in the building, and provide law enforcement support for circumstances that result in a imminent threat to safety and or property. The Protective Services Division is the operational law enforcement entity that provides protection, investigative and logistical services to the Secretary and Deputy Secretary. Each agent assigned to the office is authorized to carry a concealed firearm, conduct criminal and administrative investigations, and make criminal arrest with or without a warrant for criminal or civil violations of the law.

#### xvii. Office of the Inspector General

This plan exists to document the steps the Office of Inspector General (OIG) for the U.S. Department of Housing and Urban Development (HUD) will implement upon notice by the Office of Management and Budget (OMB) of a lapse in its annual appropriation, including the expiration of a Continuing Resolution (CR), and the exhausting of any prior year appropriation remaining available. OIG has decided not to use ARRA funds to continue ARRA-related operations if there is a lapse in FY 2011 appropriated funds.

The Acting Inspector General (IG) wants to ensure a capacity to fulfill the responsibilities found in HUD Handbook 2000.3 and the Inspector General Act of 1978, which convey immediacy to responding to possible irregularities or violations of law or regulation in HUD programs and operations, especially as they might relate to protecting HUD funds.

#### EXCEPTED POSITION AND ACTIVITIES BY OFFICE

#### **Immediate Office of the Inspector General**

Individuals appointed by the President, with Senate confirmation, are not subject to furlough and cannot be placed in a nonduty, nonpay status. The salaries of Presidential appointees are obligations incurred by the year, without consideration of hours of duty required. The Inspector General (IG) is appointed by the President, and confirmed by the Senate. Currently, there is no IG appointed by the President. The Acting IG is the Deputy Inspector General, who assumed that role in October 2010.

The Acting IG is excepted from furlough as a necessary position to conduct an orderly shut-down of non-excepted activities and to conduct on-going excepted activities. The Acting IG will perform official

duties during a furlough as long as he does not expend appropriated funds which have lapsed or engage furloughed employees to perform work on activities that are not excepted.

During a government shutdown, the Acting IG may meet with all members of the public, Congressional staff and members, state and local officials, and executive branch officials not subject to furlough.

In the event of a government shutdown due to a lapse in appropriations, the Acting IG will identify employees who are necessary to address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.

#### Office of Legal Counsel

The Counsel to the IG will be an excepted position to fulfill the below responsibilities for the duration of the lapse in funding. The Deputy Counsel will be an excepted position for the initial 18 hours. Thereafter, the Deputy Counsel will be available on an ad hoc or "on-call" basis to provide necessary support. The "on-call" duty will be measured in hours. The initial 18 hours of excepted duty for the Deputy Counsel is to coordinate the termination of OIG functions and support the various offices and the Counsel to the IG.

- 1. If a lapse in appropriations appears to be reasonably foreseeable, the Office of Legal Counsel (OGC) will provide clients with legal advice and guidance about the activities that are excepted activities; provide legal advice about the ramifications of a shutdown with respect to all operational, contractual, and personnel functions; provide legal assistance to senior staff about related labor issues, and coordinate with the Department of Justice to ascertain the impact of a lapse on appropriations on pending litigation in the federal courts; provide a legal opinion on the appropriateness of excepted positions.
- 2. If a lapse in appropriations occurs, the OLC will provide legal advice to facilitate the orderly shutdown of activities with respect to OLC staff, including disseminating notices of furlough, instructions about out-of-office messages, handling of time and attendance systems, etc., and provide legal advice and review legal documents to assist in the orderly termination of OIG functions that are not deemed excepted. This includes review of agreements incurring any obligations; provide legal advice to address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property; monitor non-federal litigation to insure the protection of property; provide legal advice to OIG managers and employees that perform functions that are funded under multi-year appropriations, ARRA funding, permanent and indefinite appropriations, and other non-annual appropriations; provide legal advice to OIG managers and employees that perform functions that are excepted from the furlough.

#### Office of Management and Policy (OMAP)

In the event of a government shutdown due to a lapse in appropriations, OMAP, though the Assistant Inspector General (AIG) for OMAP and Deputy AIG, will maintain minimal staff to conduct an orderly shut-down of non-excepted functions and ensure the safety of human life and the protection of property in operations conducted by OIG Headquarters and Regional Offices. The duties of the minimal staff will generally be measured in hours. OMAP will facilitate the operation of offices to accommodate any excepted activities, identified by the Acting IG, which must take place in headquarters or field locations.

OMAP will maintain a limited staff to provide support for all excepted activities, including (1) activities that are necessary to the discharge of the President's constitutional duties and powers; (2) activities that

address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property; (3) activities that are funded through fees or under multi-year or no-year appropriations; and (4) activities that are necessary for the orderly termination of agency functions.

- 1. Director, Budget and Financial Management Division (BFMD). Besides the positions of the AIG and Deputy AIG for OMAP, it is expected that the Director, Budget and Financial Management Division, will be an excepted position for the initial 80 hours of any lapse in budget authority. The Director, BFMD, will provide financial service support to the Acting IG and headquarters and field operations. The Director, BFMD, is authorized to maintain a minimum staff to maintain liaison with the Department's Office of Chief Financial Officer and Office of Management and Budget (OMB), and to provide overall execution guidance to headquarters and field excepted functions. The Director may make appropriate payments where funds are available, such as ARRA funds, and that can be processed for valid obligations.
- 2. Chief Information Officer. OMAP includes the Information Systems Division, which is a joint contract/federal employee operation. The contract is funded through at least June 30, 2011. It is expected that the Chief Information Officer will be an excepted position for the duration of any lapse in budget authority. The CIO will provide information technology support to the Acting IG and headquarters and field operations. The CIO is authorized to maintain a minimum staff to maintain liaison with the contractors and headquarters and field personnel. The CIO will ensure the integrity of the OIG infrastructure and network.
- 3. Director, Management Services Division. The Director, MSD, will be an excepted position for the initial 80 hours of any lapse in budget authority. The Director, MSD, will provide management support to the Acting IG, AIG of OMAP, the Deputy AIG of OMAP, and headquarters and field operations. The Director, MSD, is authorized to maintain a minimum staff to maintain liaison with the Department, regional offices, and other support organizations, in support of headquarters and field excepted functions.
- 4. Director, Human Capital Division. The Director, HCD, will be excepted from furlough for the initial 18 hours to ensure the proper shut-down of OIG operations and the furlough of OIG employees who are not excepted from furlough.
- 5. Other Divisions. The other divisions within OMAP, the Training Division, Program Integrity Division, Research and Planning, are expected to conduct an orderly shut-down on the first day of the furlough. The Program Integrity Division will ensure the public is aware that there is a furlough and the hotline will not operate during the period of lapsed funding.

#### Office of Investigation.

GS-1811 Special Investigators. The OIG law enforcement function consists of GS-1811 Federal Law Enforcement Officer (LEO) Special Agents. Special Agents, with full LEO authority, will be retained to fulfill responsibilities to Federal and state prosecutors and on-going criminal task forces and criminal investigations. In deciding which special agents to except or furlough, it was recognized that each OIG special agent has between five and ten on-going criminal investigations at any one time. Several ongoing investigations involve coordination with state and local prosecutors, which will not be impacted by the lapse of Federal appropriations. Likewise, the OIG special agents are engaged in several on-going criminal task forces involving other Federal agencies and state law enforcement authorities. The OIG is a member of the National Joint Terrorist Task Force. In the Global War on Terrorism, terrorists may see a Government emergency shutdown as an opportunity to attack Federal facilities. OIG special agents also

support the Department of Homeland Security Disaster Response Team. The special agents assist other Federal law enforcement agencies, such as the US Marshals Service, in task force activities; undertake trial preparation and testifying in front of Grand Jury proceedings, Federal, and state courts; and for related emergency situations to protect human life and property. OIG special agents, under the direction of the Acting IG or his designee, may be tasked with a variety of emergency assignments – particularly in providing security, maintaining order, protecting employees, and similar duties that require Federal LEO officials certified to carry arms, including shoulder weapons. The following criteria were used to determine which special agents to except: Engaged in service or arrest or search warrants; Engaged in task force sweeps; Actively engaged in on-going task force operations; Security or protective details; Anti-terrorism activities; Support of other law enforcement operations; Undercover operations; Protecting witnesses, informants, or sources; Testifying or preparing for criminal trials; Providing direct assistance to the Office of the U.S. Attorney or a state or local prosecutorial function; Assisting civil fraud trials which are not stayed; Testifying in administrative proceedings which are based on prior OIG work; Assisting local law enforcement in the enforcement of laws pursuant to an MOU or similar agreement; Participating in terrorism or disaster exercises; and Training to remain qualified to perform law enforcement duties, which cannot readily be performed on return to duty or waived.

Other Excepted OI Employees. Besides the special agents identified above, the Office of Investigation will except three positions within the Investigation Support Division (ISD). The Director, ISD, will be an excepted position for the duration in lapse of funding. The Director, ISD, will provide management support to the Acting IG, AIGI, the Deputy AIGIs, and headquarters and field operations. The Director, ISD, is authorized to maintain a minimal staff in support of headquarters and field excepted functions. The minimal staff is expected to include the ISD Administrative Officer, who is excepted for the duration of the lapse in appropriations, and is required to provide logistical and administrative support to the Office of Investigations and its excepted headquarters and field operations. The ISD Database Administrator is excepted for the duration of the lapse in appropriations, and is required to provide information technology support to the Office of Investigations and its excepted headquarters and field operations.

#### Office of Audit

The Office of Audit conducts approximately 200 audits a year at various sites around the nation. The Civil Fraud is actively involved in mortgage fraud task forces and provides forensic support to Federal authorities pursuing civil penalties. The Office of Audit will maintain a minimal staff for the duration of the lapse in funding in order to protect Federal property and funds, and support criminal prosecutions and civil litigation. The Office of Audit senior staff and the Regional Inspectors General for Audit (RIGA) have been determined to be the minimal staff necessary during a lapse in funding. The RIGAs are necessary to provide third party interface at the local level for parties responding to outstanding demands or requests for audit-related information, receive complaints of fraud and misuse of Federal funds, and coordinate the provision of audit support in criminal cases and civil recoveries. The Office of Audit also has some functions and activities funded by ARRA funds, which may continue despite a lapse in funding. This planning assumes the Federal civil cases supported by the Office of Audit will be stayed for the duration of the lapse in funding and no forensic auditors are needed for any criminal investigative support.

Ad hoc or "on-call" Excepted Functions.

This plan recognizes that some employees may be needed on an ad hoc or "on-call" basis after the initial shutdown of operations. These positions have been identified above or referenced as minimal support, and each individual will be notified of their responsibility to answer a return to duty on an ad hoc or "on-call" basis. Any recall will be made in periods of hours, e.g. 4 hours, 9 hours, 20 hours.

#### **COMMUNICATIONS:**

The Acting IG will provide general guidance to all employees on the nature of the emergency shutdown. The OMAP staff will coordinate communications to employees on the details of the furlough after consulting with the Bureau of Public Debt (BPD), National Finance Center (NFC), and Counsel to the IG. The communications will address formal notice, recall plans, employee pay and benefits issues, and any additional information based on the likely duration of the furlough. OMAP will provide all employees with the OPM information on emergency furloughs found at: http://www.opm.gov/furlough/furlough.asp

#### ORDERLY SHUTDOWN:

OIG expects most of the activity to support an orderly shutdown to commence with the IG's determination late Wednesday, April 6 or early Thursday, April 7, that a shut-down is required. Supervisory staff will work with their AIGs to begin notification for all employees on Thursday morning. Employees will carry out orderly shutdown activities during the course of Thursday and Friday. The focus on Thursday and Friday is for all OIG employees to identify any critical pending work and take all the actions possible to avoid or to minimize any impairment due to the furlough. The AIGs will provide Managers and Supervisors with a checklist for the orderly shutdown. Supervisors shall account for all employees' time and will relay any concerns regarding pending work through channels to their respective Deputy AIG. The AIGs will ensure the Acting IG is fully informed on any critical issues.

#### **EMPLOYEE PAY AND BENEFITS:**

Generally the Government cannot obligate or spend funds in the absence of annual appropriations. Employees on furlough are not entitled to receive pay for the period of the furlough; however, Congress has ratified payment after the furlough ended in each of the numerous emergency furloughs that occurred since the 1980s, including the longest shutdown in 1995-6. The Government is obligated to pay employees retained during the furlough, but payment would take place after the furlough ends for employees dependent on annual appropriations.

Director, MSD will coordinate with BPD and NFC to ensure timecards get processed just prior to any emergency shutdown, which will enable BPD and NFC to process pay periods already fully or partially completed. This should enable furloughed employees to receive pay already earned and due at the time of the shutdown.

Director, Human Capital Division (HCD) will coordinate with BPD and NFC on benefit issues and provide OIG employees with links to OPM resources on the Internet that address a variety of benefit issues related to emergency furloughs.

#### SPENDING:

During a furlough caused by the absence of an annual appropriation, OIG employees retained on duty do not have the authority to spend funds. Based on the IG's determinations, the Government will incur obligations to pay employees on duty, but that does not mean any outlays will occur. Employees on duty shall limit credit card purchases to an absolute minimum and only in the event of a life-threatening emergency, take only mission-critical travel, and understand that reimbursements will not be received until the furlough ends.

#### TELEPHONES, EMAIL, AND INTERNET:

The AIGs will provide Managers and Supervisors with appropriate go-by out-of-office messages to place on telephones and email accounts. The Hotline toll-free service will be suspended with an appropriate announcement to callers. Hotline will also place an appropriate message for its mailbox and Internet intake link(s). The messages will inform callers of the lapse in appropriations causing a temporary closure except for essential functions and to call 911in the event of a life-threatening emergency.

#### OMB CIRCULAR NO. A-11(2010) REQUIREMENTS:

- Estimated time to complete an orderly shutdown: 4, which is a half-day, for all employees. This will also allow for issuance of the required notification letters.
- Number of employees expected to be on-board before implementation of the plan: 720
- Employees to be retained under the plan: 289
- Employees to be retained for 18 hours (first 2 days) for shutdown purposes: 3

#### xviii. Closed Offices

In the event of a lapse in appropriations, the following offices will be shutdown and contractor work will be suspended in accordance with direction from OCIO:

- Office of Faith Based and Neighborhood Partnerships
- Office of Small and Disadvantaged Business Utilization
- Office of Departmental Operation and Coordination
- Office of Departmental Equal Employment Opportunity
- Office of Strategic Planning and Management

#### b) Legal Issues

## i. Presidential Appointment with Senate Confirmation (PAS) Duties

Individuals appointed by the President, with Senate confirmation, are not subject to furlough and cannot be placed in a nonduty, nonpay status. The salaries of Presidential appointees are obligations incurred by the year, without consideration of hours of duty required. The Secretary and PASs may perform official duties during a furlough as long as they do not expend appropriated funds which have lapsed or engage furloughed employees to perform work on activities that are not excepted. The Secretary and the PASs may not expend lapsed travel funding. During a government shutdown, the Secretary of HUD, the Assistant Secretaries, the General Counsel and the President of Ginnie Mae, as individuals appointed by the President with Senate confirmation, may meet with all members of the public, Congressional staff and members, state and local officials, and executive branch officials not subject to furlough. (See Q & A 16 at http://www.opm.gov/furlough/furlough.asp).

#### ii. HUD Employees on Duty Assignments

If HUD employees, who are funded through appropriations that have lapsed, are on temporary duty assignments (travel, rotations, details, training) away from their normal duty stations at the time of an appropriations lapse, they are encouraged to make arrangements to return home whenever reasonable and practicable. In each instance, the relevant GDAS (or functional equivalent) should make a determination of reasonableness and practicality based on the length of the assignment and the time required for return travel, compared to the anticipated length of the lapse, so as to minimize the burdens of doing so.

#### 3. Internal Communications Plan

#### a) Communications Goals, Timeline, and Plan

<u>Goal of communications with all HUD employees:</u> The goal of Departmental communications efforts is to calm employees' fears, and reassure them that they will be kept abreast of all developments related to a possible shutdown. It is imperative that the Department have strong, clear, and consistent communication between managers and employees.

All Departmental Communications that occur in advance of a lapse in appropriations will be limited to the following:

- All staff emails from Secretary Donovan updating staff on major budget developments, as advised by the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB).
- Critical human resources information regarding benefits and furlough information, as advised by the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB).
- Instructions for managers on how and what to communicate with employees.
- Guidance for all employees on procedures for Day 1 of a potential shutdown.

If successful, the communications efforts around the possible government shutdown will enable employees to clearly understand:

- If and when they are supposed to come to work.
- The impact the shutdown will have on their pay, benefits, retirement, etc.
- The impact the shutdown will have on the programs in which they work.
- The rules of the shutdown (telework, Blackberry use, etc.).
- Who/ where to go to have their questions answered about the shutdown.

Goal of communications with leadership (GDASs and Regional Administrators): While all the above applies to this group of employees, it is imperative that the GDASs and Regional Administrators understand that they are the main conduits of information to their staff. This leadership needs to understand that it is their responsibility to:

- Clearly and calmly communicate all the details of the shutdown to their employees.
- Explain which functions of their offices will stay operational during the shutdown.
- Explain which of their employees are expected to report to work the shutdown. Answer any questions employees may have, or direct them to where they can get their questions answered.

#### Furlough Guidance for Employees

- OCHCO, in connection with the OCIO and the COO, will develop an email list of all non-excepted employees.
- HUD employees who are not excepted or not in the office for a period during a shutdown:

- Will place a pre-approved voice-mail message on their individual call in-box explaining their absence. The language will be provided by HUD's administrative offices. A similar message will be placed on all office-wide inboxes;
- o May not do any HUD-related work by home phone or computer; nor may he or she use government property, such as a Blackberry to perform work;
- o May not perform HUD-related work as a 'volunteer'
- o Be 'on-call', and reachable by their offices if their services are needed for intermittent excepted duties. It is the employee's responsibility to keep their telephone number and email address on record with the Department current.

The excepted employees that may be asked to work during a shutdown of short to moderate duration (i.e., one week to one month) are broken down into three categories: 'full-time', 'intermittent' and 'full-time staff performing functions under multi-year appropriations'.

#### Employee notification documents:

- Furlough Notice OCHCO will distribute, by email (read receipt requested and retained), a memorandum signed by the Chief Human Capital Officer to all non-excepted employees within the first 4 hours of duty on the first day of the shutdown. This memorandum provides the non-excepted employee with notice of the Department's shutdown. 5 CFR 752.404 (a)(2) OCHCO will also mail this memorandum to nonexcepted employees to their current address on record and retain copies of these memoranda.
- Notice of Excepted Position for Full-Time Excepted Staff OCHCO will prepare a draft memorandum that should be distributed by GDASs or equivalents to full-time excepted employees during the first 4 hours of duty on the first day of the shutdown to each excepted employee upon Departmental notification of shutdown 5 CFR 752.404 (a) (2). The GDASs or equivalents will address the memorandum to the specific employees that have been identified in each Office plan. The GDASs or equivalents shall retain copies of these memoranda and provide copies to OCHCO.
- Notice of Excepted Position for Intermittent Excepted Staff OCHCO will prepare a draft memorandum that should be distributed by GDASs or equivalents to intermittent excepted employees when they are needed to perform excepted duties. The GDASs or equivalents will address the memorandum to the specific employees when they are needed to perform intermittent duties. The GDASs or equivalents shall retain copies of these memoranda and provide copies to OCHCO. The GDASs or equivalents should track the time intermittent employees are required to work and provide those records to OCHCO upon enactment of appropriations.
- Letter to Creditors A letter to creditors signed by the Chief Human Capital Officer will be distributed to all employees with shutdown information. The letter will notify financial organizations of the shutdown and request relief for impacted employees. Employees may provide the letter as needed to their financial organizations. However, there is no legal obligation for a creditor to give weight to this letter.

#### b) Proposed Schedule of Communications:

The following is a schedule of internal communications the case of a lapse of appropriation, as well as who would be the owner of these communications. Please note that all internal communications would need to go through OMB.

- Approximately a week out from potential lapse of appropriations:
  - o General all-HUD email from the Secretary, including the OPM FAQ link and indicating that additional information will be coming this week
- o Two or three days out from a potential lapse of appropriations:
  - COO email to all (Senior Leadership) RAs and GDASs to share internal communications schedule and a request for them to schedule briefings with their managers. Managers will be briefed on how and what to communicate with their employees..COO will also share talking points and FAQs that they can use to brief their managers.
  - COO email to all HUD managers, with a request to set up meetings with all of their direct reports.
  - COO email to all staff, as a follow up to the Secretary's email, with additional information.
  - Conduct daily Contingency Planning Meeting with senior team.
- One or two days out from a potential lapse of appropriations:
  - COO email to all HUD managers, with talking points for them to use when briefing their direct reports.
  - Agency-wide meetings occurring where managers are briefing staff.
  - COO email to all HUD employees, sharing any new information.
  - Conduct daily Contingency Planning Meeting with senior team.
- o Day of potential lapse of appropriations:
  - Managers share with employees whether or not they are excepted.
  - COO email to all managers with instructions on how to conduct Day 1 activities.
  - Mid-day email from the Secretary, telling employees to follow the instructions they have been given.
  - Conduct daily Contingency Planning Meeting with senior team.
- o Shutdown Day 1:
  - OCHCO distributes formal furlough notices to employees via email, as well as formal excepted notices.
  - All managers follow instructions for how to communicate with staff.
  - All managers enact an orderly shutdown of their offices.
  - OCHCO stands up a hotline for employees to use during shutdown.
- o Shutdown Day 2 and Continuous:

- OCHCO will update hotline with information on a daily basis on if the government is shutdown or not. Hotline information will dictate when people should come back to work.
- If employees are needed on an intermittent basis, managers will be asked to contact them via the phone numbers and personal email addresses that are provided in HIHRTS.
- Other than individual phone calls from manager to employee, and employee calls to the hotline, no communications will be disseminated.
- o Communications Directly Before Government Resumes Business:
  - When it appears that government will be resuming business in the near future, the following activities will occur:
    - Director of Internal Communications will come back to work, coordinate with OCHCO on what information is needed to have ready for employees upon their return.
    - o OCHCO and OPA will work to update HUD@Work with FAQs responding to potential employee questions about when to come back to work.
    - o OCHCO will update the hotline with information on coming back to work.

#### c) Daily Operations Structure

Each day of the furlough, the Secretary and Deputy will hold an Operation Status meeting.

Required attendees will be:

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SOHUD
DSOHUD
COS + 1
COO + 1
General Counsel
All Assistant Secretaries
Director, Public Affairs
OCHCO
OCIO
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Meetings will occur at 9 am. Sample agenda will be:

1. OMB/WH Guidance

**OCPO** 

- 2. Communication Guidance
- 3. Budget status & impact
- 4. Programmatic impact
- 5. Evaluate Health, Safety & Public Property Status
  - a. Need for intermittent staff
- 6. Outside Requests
  - a. Stakeholders
  - b. Congress
  - c. OMB

Process for Approving Intermittent Staff:

12 pm	Deadline for submission of intermittent excepted employees for the next day
	All requests for Day 1 and Day submitted on Friday 4/8
4:30pm	COO/Planning Team notifies requesting office of approval/denial of requests
5:30 pm	Requesting office notifies intermittent excepted employees

#### 5. Critical Information Technology and Systems Infrastructure

#### General Guidance

The OCIO activities that will be conducted under the exception category during a government shutdown will include the technology, administrative and project management activities required to support all HUD identified excepted activities that are enabled through the use of information technology. Without the OCIO's provision of these activities during the shutdown, HUD programs will be unable to conduct excepted activities which could potentially have a negative impact on HUD's services to the US citizenry.

OCIO will maintain access to and use of the standard HUD-provided desktop/network applications and Help Desk Support operations for excepted employees. The following tables list the HUD Program identified IT systems and infrastructure required in order to support excepted functions and activities.

**Table 1: Excepted System List** 

Program Office	System Name	System Acronym
Office of the Human	Capital Officer	
	P162 - HUD Integrated Human Resources and Training	
	System	HIHRTS
	P262 - webTA	webTA
	P162D - HIHRTS DataStore	HIHRTS DS
Office of the Chief Fir	nancial Officer	
	A21 - Loan Accounting System	LAS
	A39 - HUD's Consolidated Financial Statement System	HCFSS
	A67 - Line of Credit Control System	LOCCS
	A75 - HUD Central Accounting and Program System	HUDCAPS
	A75R - Financial Data Mart	FDM
	A96 - Program Accounting System	PAS
	D08 - Bond Payment	BONDMAPPER
Housing		
	A43 - SF Insurance System	SFIS
	A43C - SF Insurance Claims Subsystem	CLAIMS
	A80D - Distributive Shares and Refund Subsystem	DSRS
	A80Q - Public Inquiry Communications Subsystem	PICS
	A80B- SF Premiums Collection Subsystem-Periodic	SFPCS-P
	A80R - SF Premiums Collection Subsystem-Upfront	SFPCS-U
	F72 - Title I Insurance and Claims System	TIIS
	Electronic Data Interchange	EDI
	P013 - FHA Subsidiary Ledger	FHASL
	F87 - Tenant Rental Assistance Certification Sys.	TRACS
	F12 - Home Equity Conversion Mortgages	HECM
	A80S - Single Family Acquired Asset Mgmt. System	SAMS
	F17 - Computerized Homes Underwriting Mgmt	CHUMS
	F51 - Institution Master File	IMF
	F17C - FHA Connection	FHAC
	P085 - Comprehensive Servicing and Monitoring System	CSMS
	P260 - Voyager Business Service Provider	VBSP
	A80H - SF Mortgage Asset Recovery Technology	SMART

Office of the Chie	ef Information Officer	
	MS-Exchange	MCEX
	P104-Web Access Security Subsystem	WASS
	P207 - Mainframe (IBM)	MIBM
	P208 - Internet Server	InterS
	P209 - LAN File Server	LFS
	P210 - Intranet Server	IntraS
	P212 - Mainframe (Unisys)	MU
	P223 - WAN File Server	WFS
Office of the Chie	ef Procurement Officer	
	HUD Procurement System	HPS
	Small Procurement System	SPS
PIH		
	P181 - Enterprise Income Verification	EIV
	P113 - Inventory Management System	IMS PIC
	P224 - Voucher Management System	VMS
	P092 - Financial Assessment SubSystem -Multifamily Housing	FASS-FHA
	P093 - Financial Assessment SubSystem -Public Housing	FASS-PH
	P109 - Physical Assessment SubSystem	PASS
	P100 - Integrated Assessment SubSystem	NASS
	P097- Management Assessment SubSystem	MASS
	Technical Assistance Center	TAC
	P091 - Customer Assessment SubSystem	CASS
CPD		
	Integrated Disbursement and Information System	IDIS
	Disaster Recovery Grant Reporting	DRGR
Fair Housing Equa		
•	Title VIII Automated Paperless Office Tracking System	TEAPOTS
Ginnie Mae		
	Ginnie Mae will require access to and use of the standard HUD-provided desktop/network applications and Help Desk Support Operations.	
ODOC		
	Public Affairs Media System	PAMS
	CIR Grants Notification Tool	CIRZip

# • Actions Necessary Prior to a Shutdown

These actions will ensure an orderly shutdown of the government.

- a) The Deputy CIO in collaboration with the Program officials will ensure that all excepted activities enabled through the use of technology in Table 1 are updated prior to the shutdown. From this listing, managers must further identify and update the list of excepted employees listed in Table 2. Additionally, managers must identify OCIO managed contracts that need to be utilized during the shutdown in support of the excepted activities.
- b) The Deputy CIO will be required to identify all non-excepted activity supporting contracts and work with the Office of the Chief Procurement Officer to issue Stop Work Orders for contracts that are not necessary
- c) The Deputy CIO for Information Technology Operations will identify all infrastructure components that will be utilized to support excepted functions during the shutdown.
- d) Shutdown Binders will be provided to all managers who will be working throughout the shutdown and the authoritative location for shutdown documentation will be identified and communicated.
- e) A teleconference bridge will be coordinated and a schedule for regular shutdown briefings will be defined and communicated.
- f) Finalize the OCIO Shutdown Communication Plan

#### • Shutdown Activities

a) Following the official notification from the US OPM or other official source within HUD of a lapse in funding and the need to shut down operations, the Deputy CIO will finalized and activate the plan for the orderly shutdown of non-excepted IT functions within the OCIO.

#### • Resumption Activities

Following official notification that a shutdown in the process of concluding and funding will soon be available for obligation, the Deputy CIO for Information Technology Operations will activate all infrastructure components that were shutdown prior to the shutdown due to their support of non-excepted activities. All IT solutions that were shutdown will be tested to ensure functionality prior to the arrival of the HUD workforce.

# 6. Critical Contract Support

• Contracting Contingency Plan for Use in the Absence of Appropriations

In implementing the following plan, it is critical that managers and Contracting Officers seek and obtain any legal advice necessary to ensure compliance with the Antideficiency Act (ADA).

#### Actions Necessary Prior to a Shutdown

- a) The Deputy CPO, in collaboration with Assistant CPOs and Division Directors, will identify excepted activities. From this listing, managers must further identify contracts that, in whole or in part, support activities that are excepted from shutdown. This will serve two major purposes for HUD contracting activities:
  - To identify contracts for which Stop Work Orders or Partial Terminations for the Convenience of the Government must be issued, and to allow Contracting Officers sufficient lead time to prepare modifications to de-scope contracts and prepare any necessary justifications and other supporting documentation for contracts that will be partially terminated; and
  - 2. To allow the Deputy CPO to determine an effective distribution of warranted Contracting Officers to support an orderly shutdown and the management of contracts supporting excepted activities. Determining an effective level of management for contracts supporting excepted activities would include consideration of Government Technical Representative and program management support.
- b) The Deputy CPO, in conjunction with the Assistant CPOs and Division Directors, will develop of a listing of contracts necessary to continue, in whole or in part, during a shutdown. The Deputy CPO will determine, plan, and when appropriate, implement an effective distribution of warranted Contracting Officers to support an orderly shutdown and the management of contracts supporting excepted activities.

#### c) Contracting Officers must:

- 1. Review all of their contracts to ensure that they include the following Federal Acquisition Regulation (FAR) clauses:
  - (a) Termination for the Convenience of the Government clause in FAR 52.249-1 through -5, as appropriate; <u>and</u> either
  - (b) Suspension of Work clause in FAR 52.242-14 (mandatory in fixed-price construction and architect-engineer contracts); or
  - (c) Stop-Work Order clause in FAR 52.242-15 (optional in contracts for supplies, services, or research and development (R&D).

- 2. Terminations for convenience, stop-work orders, and suspension of work orders may be issued only if the contracts contain the appropriate clauses. When appropriate, stop-work and suspension of work orders are preferable to terminations because they keep the contract active and avoid termination costs as well as re-procurement action.
- 3. If, in the course of his or her review, a Contracting Officer finds that the appropriate termination for convenience and suspension of work or stop-work clauses are not included in his or her contracts, the contracts must be modified on a bilateral basis to incorporate the appropriate clause(s). This should be done as a precaution to protect the Government's interests regardless of whether the contract supports a non-excepted activity.
- 4. Federal Supply Schedule Orders: FAR section 8.406-5 allows ordering activity contracting officers to terminate individual orders (but *not* the "parent" contract) for the Government's convenience in compliance with FAR 12.403. Before terminating orders for the Government's convenience, the ordering activity contracting officer shall attempt to enter into a "no cost" settlement agreement with the contractor.
- 5. As appropriate, Contracting Officers should draft stop-work and suspension of work orders in advance for contracts supporting non-excepted activities (e.g., those not on the Component's listing of contracts necessary to continue in whole or in part to support activities that are excepted from shutdown). For example, a stop-work order may have to be issued for non-excepted contractor support services that will be suspended if a Government facility is shut down and its Federal employees furloughed. The Office of Management and Budget (OMB) has determined that the normal winding down of operations should take no more than four hours. Having draft stop-work and suspension of work orders on hand and ready for review and approval at a level higher than the Contracting Officer prior to issuance will facilitate closing down activity and the four hour OMB shutdown estimate.
- d) In accordance with FAR 42.1303(c), suggested language for a stop-work order includes the following:

Reference Contract #:

Dear Contractor:

As you are aware the government has been operating on a continuing resolution (CR). That CR expired on XXXX X, 20XX and has not been replaced with another CR or a budget. Therefore, under the authority of FAR 52.242-15 I require that you immediately STOP WORK on Contract # XXXXXXX. Any work done after receipt of this notice is at your own risk and will not be reimbursed. Do not resume work until provided a written cancellation of the stop work order by a warranted Contracting Officer. I thank you for your assistance during this period

of government shut-down. Please immediately provide this stop work order to any and all subcontractors on this Contract.

Sincerely,

**Contracting Officer** 

e) Contracts supporting excepted activities that will only continue in part during a shutdown will have to be partially terminated for the convenience of the Government in accordance with Federal Acquisition Regulation (FAR) Part 49. Prior to preparing modifications to de-scope contracts to support a shutdown, Contracting Officers should work with their requiring/program office representatives to make a determination in each instance indicating whether the change to the scope of work is minor or major. In instances where scope changes are major changes, sole source justifications must also be drafted to support the major change to the contract's scope of work (citing the funding hiatus as a reason). This will facilitate work to begin again with the contractor once the furlough has ended and funding is authorized. Please note, for partial terminations for convenience, de-scoping should be maximized to allow for the minimum staffing necessary to carry out work in an effective manner.

#### • Shutdown Activities

- a) Following official notification from the USOPM or other official source within HUD of a lapse in funding and the need to shut down operations:
  - 1. The Deputy CPO will finalize and activate the plan for an effective distribution of warranted Contracting Officers, Government Technical Representatives, and program management to support an orderly shutdown and the management of contracts supporting excepted activities. Copies of the plan, including point of contact and duty location for Contracting Officers, Government Technical Representatives, and program management supporting shutdown and management of contracts supporting excepted activities shall be provided to the Deputy CPO within a reasonable period after receipt of official notification of a lapse in funding and the need to shut down operations.
  - 2. Contracting Officers shall finalize their draft partial termination for convenience modifications, stop-work, and suspension of work orders, updating them with specifics regarding the appropriations lapse as detailed in the official notification.
- b) FAR 42.1303(b) requires that stop-work orders be approved at a level higher than the Contracting Officer. Following receipt of appropriate higher level approval, Contracting Officers shall issue partial termination for convenience modifications (in accordance with FAR Part 49), stop-work, and suspension of work orders (in accordance with FAR Subpart 42.13) to appropriate contractors, with a copy to the Government Technical Representative.

- c) As indicated in the Stop-Work Order clause in FAR 52.242-15, stop-work orders are generally effective for 90 days, unless a lesser period has been indicated in the clause. Prior to expiration, they can be extended by supplemental agreement issued on a Standard Form 30 by the Contracting Officer if the contractor agrees, or the contract can be terminated for the convenience of the Government in accordance with FAR Part 49.
- d) If a contract determined to be necessary to support an excepted activity is incrementally funded, and funds expire during the shutdown, the contract, including any modification thereto, must contain an availability of appropriations clause, such as that provided in FAR 52.232-18, Availability of Funds:

#### AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

- e) If a service contract is determined to be necessary to support an excepted activity, or if a contract is already funded, but the facility in which contract employees work is closed down during the shutdown, a Contracting Officer may authorize contractors to allow their employees to telecommute provided that the contracts do not specifically prohibit contractors from permitting their employees to telecommute.
- Actions Necessary Following Reauthorization of Funds After a Shutdown

Following official notification that a shutdown is concluded and funding is available for obligation:

- a) The CPO will issue notice rescinding the distribution plan for warranted Contracting Officer supporting shutdown and the management of contracts supporting excepted activities.
- b) Contracting Officers shall cancel stop-work and suspension of work orders, and modify contracts, as appropriate, to provide available obligation.
- c) Contracting Officers shall follow the appropriate settlement procedures in FAR Part 49 for contracts terminated in whole or partially for the convenience of the Government. In addition, through negotiation and bilateral modification, as supported by sole source justification, the previous contract level of effort may be reinstated provided that the Government's needs have not changed.
- d) Contracting Officers shall issue written notices of funding availability for any contract modification supporting an excepted activity that was issued during the shutdown in which an availability of appropriations clause was used.

# 7. HUD Building Access and Security

## a) Weaver Building Access and Security Plan

During the shutdown period, the Children's House childcare center would remain open. Both the Fitness Center and Credit Union would be closed, as would the cafeteria, Urban Café and Dunkin' Donuts

During normal working hours under shutdown conditions, access to the building would be limited to the southeast lobby, as it is after hours under normal conditions. Security guard staffing will be maintained to keep the building open and manage the facility for excepted staff. Security guard staffing would be reduced to the following coverage:

- 2 Guards 24-hour command center
- 1 Guard Southeast lobby desk
- 1 Guard Southeast lobby X-ray system
- 1 Guard Rover
- 1 Guard Loading Dock
- 1 Guard Parking garage entrance
- 1 Guard North parking lot
- 1 Guard South parking lot
- 1 Guard Secretary's suite
- 1 Guard Deputy Secretary's suite

#### After hours under the shutdown, staffing would be as follows:

- 2 Guards 24-hour command center
- 1 Guard Southeast lobby desk
- 1 Guard Southeast lobby X-ray system
- 1 Guard Rover

#### 8. External stakeholder and federal/nonfederal elected communications plan

The Office of Congressional and Intergovernmental Relations (CIR), in coordination with COO, will collect the most-frequently asked questions (FAQs) from the GDASs for each program office to be provided on the HUD website in the event of a government shutdown. These would be questions that would impact life and safety for HUD grantees and constituents. (I.e. ability to continue getting section 8 vouchers, close on FHA mortgages, etc.). Programs will also compile email lists of stakeholders.

The Lapse of Appropriations FAQs will be used in the following ways:

#### <u>DAY 1:</u>

During the 4 hour period that all personnel are permitted to work, the "approved message" regarding the shutdown and a link to the FAQs for external stakeholders will be:

- 1) Posted on the main page of the HUD website, to the extent permitted.
- 2) Sent by CIR to all Hill contacts, with a message referring Committee and Member staff to contact CIR "excepted" staff with any urgent matters related to excepted agency functions.
- 3) Sent by CIR to our list of 1000+ stakeholders who were invited to the FY12 budget rollout and ask them to blast email to their networks
- 4) Sent by CIR to groups of nonfederal elected officials and asking them to blast email to their memberships
- 5) CIR will also ensure key Committee staff, receive phone calls to brief them on the coverage plan during the shutdown, which will include an identification of their assigned CIR "excepted" employee Point of Contact.

# 9. Appendices

- a) Appendix A: Drafted Documents/ Templates for Internal Communications
  - a. Excepted Notice Letter
  - b. Furlough Notice Letter
  - c. Letter to Creditor
  - d. Voice and Email Message

#### **Appendix A: Drafted Templates for Internal Communications**

MEMORANDUM TO: All Non-Excepted HUD Employees

FROM: Janie L. Payne, Chief Human Capital Officer, A

SUBJECT: Furlough Decision Notice Due to Lapse of Appropriations

In the absence of FY 2011 appropriations, no further financial obligations may be incurred by HUD, except for those related to the orderly suspension of HUD's operations or the performance of excepted activities as defined by the Office of Management Budget. This action is as a result of a sudden emergency requiring curtailment of the agency's activities. No advance notification was possible.

You are being placed in a furlough status effective immediately and HUD offices are officially closing at 1:30 p.m. today. This furlough is not expected to exceed 30 days. During the furlough period, you will be in a nonpay, nonduty status. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is hereby cancelled.

#### Please take immediate action to:

- 1. Close out scheduled activities (for example, cancel meetings, trainings, and travel).
- 2. Change your voice and email status prior to leaving the building. Scripts for your out-of-office messages on voice mail and email will be distributed in an email.
- 3. If you have not done so already, validate your time for pay period 7 which ended on April 9.

You should listen to public broadcasts and media to ascertain when the federal government will reopen. When you hear that an FY 2011 appropriation has been approved, you will be expected to return to work on the next day. You may also call the HUD Emergency Information Hotline 1-866-INFO HUD, 1-866-463-6483, or 202-708-1960 in the District of Columbia metropolitan area for information to learn if HUD has reopened.

During the furlough, you are not permitted to serve as an unpaid volunteer on HUD activities and must remain away from your work place until the federal government reopens or you are recalled to work on an excepted activity. The only persons within your HUD organization who may recall you to work on an excepted activity are the Assistant Secretaries, General Deputy Assistant Secretaries or functional equivalents. You may only work on an excepted activity if you have a specific written authorization from an Assistant Secretary, General Deputy Assistant Secretary or functional equivalent to do. You will be compensated for this work time on authorized excepted activities when appropriations are enacted.

You are prohibited from using HUD provided devices (such as laptops, Blackberries, iPads, cell phones) during the furlough. You are also prohibited from using remote access to HUD email, HUDmobile1, HUD business systems, or other HUD provided electronic capabilities.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans

preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same of similar positions in an Executive agency under other than a temporary appointment limited to two years or less. SES career appointees adversely affected may also appeal. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you should follow the instructions at https://e-appeal.mspb.gov/.

Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement or may appeal to MSPB in accordance with the procedures outlined above, but not both.

Thank you for your adherence to these rules and your patience in this matter.

#### **HUD 2011 Contingency Plan**

MEMORANDUM FOR: [GDAS to Insert Name of Excepted Employee]

FROM: Janie L. Payne, Chief Human Capital Officer, A

SUBJECT: Notice of Excepted Position

This memorandum is to advise you that your position has been identified as performing excepted functions and activities in the event of an agency shutdown due to a lapse in appropriations.

Under the guidance of an Attorney General Opinion of April 25, 1980, an Office of Management and Budget (OMB) Bulletin 80-14 of August 28, 1980, and Supplement No. 1 to OMB Bulletin 80-14 dated August 20, 1982, certain Governmental functions are excepted activities and are authorized to continue during in a lapse of appropriations. Generally, these activities include: providing for the national security, work performed under no-year or multi-year funding arrangements, or conducting activities essential to the protection of life and property. Other employees may be involved in providing support for excepted activities.

The functions of your position have been identified to be excepted activities under one or more of these categories. This means that in the event of an emergency shutdown, you are expected to report to work as usual, and you should ignore any furlough notices and/or public announcements regarding furlough or agency shutdown. Your status as an excepted employee will continue until further notice.

If you have any questions regarding this memorandum or your designation, you should the head of your organization, GDAS, or equivalent.

#### **HUD 2011 Contingency Plan**

MEMORANDUM FOR: [GDAS to Insert Name of Excepted Employee on a Limited Basis]

FROM: [Relevant PAS, GDAS or Equivalent]

SUBJECT: Notice to Return to Work on an Excepted Activity

This memorandum is to advise you need to return to work to perform an excepted activity during the government shutdown. Under the guidance of an Attorney General Opinion of April 25, 1980, an Office of Management and Budget (OMB) Bulletin 80-14 of August 28, 1980, and Supplement No. 1 to OMB Bulletin 80-14 dated August 20, 1982, certain Governmental functions are excepted activities and are authorized to continue during in a lapse of appropriations.

You are expected to report to work on [insert date or dates] to perform [insert work activity].

If you have any questions regarding this memorandum or your designation, you should contact me.

#### TO WHOM IT MAY CONCERN:

This letter certifies that employees of the Department of Housing and Urban Development (HUD) have been placed on emergency furlough effective \_\_\_\_\_\_. This emergency furlough has occurred because HUD's continuing resolution or appropriations have not been passed by the Congress and/or signed by the President. Through no fault of their own, HUD employees will not be paid their salaries for the duration of this furlough.

While I anticipate that this will be a short-term event, I recognize that employees have financial obligations that must be met. Therefore, I ask that you consider the temporary and unforeseeable nature of this furlough when making decisions that affect HUD employees' finances. Once the furlough has ended, employees will begin receiving their salaries again.

Your patience and consideration in this matter is appreciated.

Sincerely,

Janie L. Payne Chief Human Capital Officer